

AMENDED IN ASSEMBLY APRIL 21, 2014  
AMENDED IN ASSEMBLY AUGUST 5, 2013  
AMENDED IN ASSEMBLY JUNE 27, 2013  
AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 439**

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**Introduced by ~~Senators Steinberg and Leno~~ Senator Evans**

February 21, 2013

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An act to amend ~~Sections 2220.05, 2242, and 2264 of the Business and Professions Code, and to amend Section 11362.765 of the Health and Safety Code, relating to medical marijuana~~ *Section 17144.5 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 439, as amended, ~~Steinberg Evans. Medical marijuana. Personal income taxes: cancellation of indebtedness: mortgage debt forgiveness.~~

*The Personal Income Tax Law provides for modified conformity to specified provisions of federal income tax law relating to the exclusion of the discharge of qualified principal residence indebtedness, as defined, from an individual's income if that debt is discharged after January 1, 2007, and before January 1, 2013, as provided. The federal American Taxpayer Relief Act of 2012 extended the operation of those provisions to qualified principal residence indebtedness that is discharged before January 1, 2014.*

*This bill would conform to the federal extension and make legislative findings and declarations regarding the public purpose served by the bill. The bill would also make a continuous appropriation from the General Fund to the Franchise Tax Board in those amounts necessary*

*to make payments to taxpayers who have included in income and paid tax on qualified principal residence indebtedness that was discharged on and after January 1, 2013, and before January 1, 2014.*

~~The Medical Practice Act provides for the regulation and licensing of physicians and surgeons by the Medical Board of California. Existing law requires the board to prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously, and identifies the types of cases that are to be given priority, including cases of repeated acts of excessively prescribing, furnishing, or administering controlled substances without a good faith prior examination of the patient and medical reason therefor. Existing law makes it unprofessional conduct for a physician and surgeon to prescribe, dispense, or furnish dangerous drugs without an appropriate prior examination and medical indication. Existing law also makes it unprofessional conduct to employ, aid, or abet an unlicensed person in the practice of medicine. Existing law generally makes any person who violates these provisions guilty of a misdemeanor.~~

~~This bill would specify that repeated acts of excessively recommending marijuana to a patient for medical purposes constitutes the type of case that the board should prioritize. This bill would add that recommending marijuana to a patient for medical purposes without an appropriate prior examination and medical indication constitutes unprofessional conduct. This bill would also specify that employing, aiding, or abetting, an unlicensed person to engage in the practice of medicine with a cannabis clinic or dispensary to provide recommendations for medical marijuana constitutes unprofessional conduct. Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.~~

~~Existing law, the Compassionate Use Act of 1996, provides that a patient or a patient's primary caregiver who possesses or cultivates marijuana for personal medical purposes of the patient upon the written or oral recommendation or approval of a physician is not subject to conviction for offenses relating to possession and cultivation of marijuana.~~

~~Existing law also makes it a crime to possess for sale, plant, cultivate, harvest, dry process, transport, import into this state, sell, furnish, administer, or give away, to offer to transport, import into this state, sell, furnish, administer, or give away, or to attempt to import into this state or transport, any marijuana. Existing law makes it a felony or~~

~~misdemeanor to open or maintain any place for the purpose of unlawfully selling, giving away, or using, or to knowingly rent, lease, or make available for use a building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution. Existing law further provides that every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered.~~

~~Existing law requires the Attorney General to develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996, and the Attorney General has published guidelines regarding collectives and cooperatives organized and operated to cultivate and distribute marijuana for medical purposes.~~

~~This bill would exempt from the criminal acts and abatement of nuisance provisions described above collectives, and cooperatives, as defined. The bill would also exempt those entities and persons from criminal prosecution or punishment solely on the basis of the fact that they receive compensation for actual expenses incurred in carrying out activities that are in compliance with those guidelines.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority<sup>2</sup>/3. Appropriation: no-yes. Fiscal committee: yes. State-mandated local program: yes-no.~~

*The people of the State of California do enact as follows:*

- 1 *SECTION 1. Section 17144.5 of the Revenue and Taxation*
- 2 *Code is amended to read:*
- 3 17144.5. (a) Section 108(a)(1)(E) of the Internal Revenue
- 4 Code, is modified to provide that the amount excluded from gross
- 5 income shall not exceed \$500,000 (\$250,000 in the case of a
- 6 married individual filing a separate return).
- 7 (b) Section 108(h)(2) of the Internal Revenue Code, is modified
- 8 by substituting the phrase “(within the meaning of section

1 163(h)(3)(B), applied by substituting ‘\$800,000 (\$400,000’ for  
2 ‘\$1,000,000 (\$500,000’ in clause (ii) thereof)” for the phrase  
3 “(within the meaning of section 163(h)(3)(B), applied by  
4 substituting ‘\$2,000,000 (\$1,000,000’ for ‘\$1,000,000 (\$500,000’  
5 in clause (ii) thereof)” contained therein.

6 (c) This section shall apply to discharges of indebtedness  
7 occurring on or after January 1, 2007, and, notwithstanding any  
8 other law to the contrary, no penalties or interest shall be due with  
9 respect to the discharge of qualified principal residence  
10 indebtedness during the 2007 or 2009 taxable year regardless of  
11 whether or not the taxpayer reports the discharge on his or her  
12 return for the 2007 or 2009 taxable year.

13 (d) *The amendments made by Section 202 of the American*  
14 *Taxpayer Relief Act of 2012 (Public Law 112-240) to Section 108*  
15 *of the Internal Revenue Code shall apply.*

16 *SEC. 2. The amendments made by this act that conform to the*  
17 *amendments made by Section 202 of the American Taxpayer Relief*  
18 *Act of 2012 (Public Law 112-240) to Section 108 of the Internal*  
19 *Revenue Code, apply to qualified principal residence indebtedness*  
20 *that is discharged on and after January 1, 2013, and before*  
21 *January 1, 2014. The Legislature finds and declares that the*  
22 *amendments made by this act and the retroactive application*  
23 *contained in the preceding sentence are necessary for the public*  
24 *purpose of conforming state law to the amendments to the Internal*  
25 *Revenue Code as made by the American Taxpayer Relief Act of*  
26 *2012 (Public Law 112-240), thereby preventing undue hardship*  
27 *to taxpayers whose qualified principal residence indebtedness was*  
28 *discharged on and after January 1, 2013, and before January 1,*  
29 *2014, and do not constitute a gift of public funds within the*  
30 *meaning of Section 6 of Article XVI of the California Constitution.*

31 *SEC. 3. Notwithstanding Section 13340 of the Government*  
32 *Code, and without regard to fiscal year, there is hereby*  
33 *continuously appropriated from the General Fund to the Franchise*  
34 *Tax Board those amounts necessary to make the payments required*  
35 *by this act to taxpayers who have included amounts in gross income*  
36 *by reason of the discharge of principal residence indebtedness*  
37 *that was discharged on and after January 1, 2013, and before*  
38 *January 1, 2014.*

39 ~~SECTION 1. Section 2220.05 of the Business and Professions~~  
40 ~~Code is amended to read:~~

1     ~~2220.05.—(a) In order to ensure that its resources are maximized~~  
2 ~~for the protection of the public, the Medical Board of California~~  
3 ~~shall prioritize its investigative and prosecutorial resources to~~  
4 ~~ensure that physicians and surgeons representing the greatest threat~~  
5 ~~of harm are identified and disciplined expeditiously. Cases~~  
6 ~~involving any of the following allegations shall be handled on a~~  
7 ~~priority basis, as follows, with the highest priority being given to~~  
8 ~~cases in the first paragraph:~~

9     ~~(1) Gross negligence, incompetence, or repeated negligent acts~~  
10 ~~that involve death or serious bodily injury to one or more patients,~~  
11 ~~such that the physician and surgeon represents a danger to the~~  
12 ~~public.~~

13     ~~(2) Drug or alcohol abuse by a physician and surgeon involving~~  
14 ~~death or serious bodily injury to a patient.~~

15     ~~(3) Repeated acts of clearly excessive prescribing, furnishing,~~  
16 ~~or administering of controlled substances, or repeated acts of~~  
17 ~~prescribing, dispensing, furnishing of controlled substances, or~~  
18 ~~recommending marijuana to a patient for medical purposes without~~  
19 ~~a good faith prior examination of the patient and medical reason~~  
20 ~~therefor. However, in no event shall a physician and surgeon~~  
21 ~~prescribing, furnishing, or administering controlled substances for~~  
22 ~~intractable pain consistent with lawful prescribing, including, but~~  
23 ~~not limited to, Sections 725, 2241.5, and 2241.6 of this code and~~  
24 ~~Sections 11159.2 and 124961 of the Health and Safety Code, be~~  
25 ~~prosecuted for excessive prescribing and prompt review of the~~  
26 ~~applicability of these provisions shall be made in any complaint~~  
27 ~~that may implicate these provisions.~~

28     ~~(4) Sexual misconduct with one or more patients during a course~~  
29 ~~of treatment or an examination.~~

30     ~~(5) Practicing medicine while under the influence of drugs or~~  
31 ~~alcohol.~~

32     ~~(b) The board may by regulation prioritize cases involving an~~  
33 ~~allegation of conduct that is not described in subdivision (a). Those~~  
34 ~~cases prioritized by regulation shall not be assigned a priority equal~~  
35 ~~to or higher than the priorities established in subdivision (a).~~

36     ~~(c) The Medical Board of California shall indicate in its annual~~  
37 ~~report mandated by Section 2312 the number of temporary~~  
38 ~~restraining orders, interim suspension orders, and disciplinary~~  
39 ~~actions that are taken in each priority category specified in~~  
40 ~~subdivisions (a) and (b).~~

1 ~~SEC. 2. Section 2242 of the Business and Professions Code is~~  
2 ~~amended to read:~~

3 ~~2242. (a) Prescribing, dispensing, or furnishing dangerous~~  
4 ~~drugs as defined in Section 4022, and recommending marijuana~~  
5 ~~to a patient for medical purposes without an appropriate prior~~  
6 ~~physical examination and a medical indication, constitutes~~  
7 ~~unprofessional conduct.~~

8 ~~(b) No licensee shall be found to have committed unprofessional~~  
9 ~~conduct within the meaning of this section if, at the time the drugs~~  
10 ~~were prescribed, dispensed, or furnished, any of the following~~  
11 ~~applies:~~

12 ~~(1) The licensee was a designated physician and surgeon or~~  
13 ~~podiatrist serving in the absence of the patient's physician and~~  
14 ~~surgeon or podiatrist, as the case may be, and if the drugs were~~  
15 ~~prescribed, dispensed, or furnished only as necessary to maintain~~  
16 ~~the patient until the return of his or her practitioner, but in any case~~  
17 ~~no longer than 72 hours.~~

18 ~~(2) The licensee transmitted the order for the drugs to a~~  
19 ~~registered nurse or to a licensed vocational nurse in an inpatient~~  
20 ~~facility, and if both of the following conditions exist:~~

21 ~~(A) The practitioner had consulted with the registered nurse or~~  
22 ~~licensed vocational nurse who had reviewed the patient's records.~~

23 ~~(B) The practitioner was designated as the practitioner to serve~~  
24 ~~in the absence of the patient's physician and surgeon or podiatrist,~~  
25 ~~as the case may be.~~

26 ~~(3) The licensee was a designated practitioner serving in the~~  
27 ~~absence of the patient's physician and surgeon or podiatrist, as the~~  
28 ~~case may be, and was in possession of or had utilized the patient's~~  
29 ~~records and ordered the renewal of a medically indicated~~  
30 ~~prescription for an amount not exceeding the original prescription~~  
31 ~~in strength or amount or for more than one refill.~~

32 ~~(4) The licensee was acting in accordance with Section 120582~~  
33 ~~of the Health and Safety Code.~~

34 ~~SEC. 3. Section 2264 of the Business and Professions Code is~~  
35 ~~amended to read:~~

36 ~~2264. The employing, directly or indirectly, the aiding, or the~~  
37 ~~abetting of any unlicensed person or any suspended, revoked, or~~  
38 ~~unlicensed practitioner to engage in the practice of medicine,~~  
39 ~~including, but not limited to, engaging in the practice of providing~~  
40 ~~recommendations for medical marijuana at a cannabis clinic or~~

1 dispensary, or any other mode of treating the sick or afflicted which  
2 requires a license to practice constitutes unprofessional conduct.

3 ~~SEC. 4. Section 11362.765 of the Health and Safety Code is~~  
4 ~~amended to read:~~

5 ~~11362.765. (a) Subject to the requirements of this article, the~~  
6 ~~individuals specified in subdivision (b) shall not be subject, on~~  
7 ~~that sole basis, to criminal liability under Section 11357, 11358,~~  
8 ~~11359, 11360, 11366, or 11366.5, or liability as a nuisance under~~  
9 ~~Section 11570. However, nothing in this section shall authorize~~  
10 ~~the individual to smoke or otherwise consume marijuana unless~~  
11 ~~otherwise authorized by this article, nor shall anything in this~~  
12 ~~section authorize any individual or group to cultivate or distribute~~  
13 ~~marijuana for profit.~~

14 ~~(b) Subdivision (a) shall apply to all of the following:~~

15 ~~(1) A qualified patient or a person with an identification card~~  
16 ~~who transports or processes marijuana for his or her own personal~~  
17 ~~medical use.~~

18 ~~(2) A designated primary caregiver who transports, processes,~~  
19 ~~administers, delivers, or gives away marijuana for medical~~  
20 ~~purposes, in amounts not exceeding those established in subdivision~~  
21 ~~(a) of Section 11362.77, only to the qualified patient of the primary~~  
22 ~~caregiver, or to the person with an identification card who has~~  
23 ~~designated the individual as a primary caregiver.~~

24 ~~(3) Any individual who provides assistance to a qualified patient~~  
25 ~~or a person with an identification card, or his or her designated~~  
26 ~~primary caregiver, in administering medical marijuana to the~~  
27 ~~qualified patient or person or acquiring the skills necessary to~~  
28 ~~cultivate or administer marijuana for medical purposes to the~~  
29 ~~qualified patient or person.~~

30 ~~(4) Collectives and cooperatives.~~

31 ~~(c) Collectives and cooperatives that receive compensation for~~  
32 ~~actual expenses incurred in carrying out activities that are in~~  
33 ~~compliance with the guidelines referenced in subdivision (c),~~  
34 ~~including reasonable compensation incurred for services provided~~  
35 ~~to the members or the organization, shall not be subject to~~  
36 ~~prosecution or punishment under Section 11359 or 11360 solely~~  
37 ~~on the basis of the fact that those entities or persons receive~~  
38 ~~compensation as described in this subdivision.~~

39 ~~(d) A primary caregiver who receives compensation for actual~~  
40 ~~expenses, including reasonable compensation incurred for services~~

1 provided to an eligible qualified patient or person with an  
2 identification card to enable that person to use marijuana under  
3 this article, or for payment for out-of-pocket expenses incurred in  
4 providing those services, or both, shall not, on the sole basis of  
5 that fact, be subject to prosecution or punishment under Section  
6 11359 or 11360.

7 (e) For purposes of this section, both of the following apply:

8 (1) “Collectives and cooperatives” means a collective or  
9 cooperative that operates within the terms of the Compassionate  
10 Use Act of 1996 (Section 11362.5) and this article and that is  
11 organized and operated in compliance with paragraphs A and B  
12 of Section IV of the Guidelines for the Security and Non-Diversion  
13 of Marijuana Grown for Medical Use, issued by the Attorney  
14 General in August 2008, pursuant to Section 11362.81. For  
15 purposes of this section, “collectives and cooperatives” includes  
16 the officers, members, and employees of the collectives and  
17 cooperatives.

18 (2) A collective may be organized as any statutory business  
19 entity permitted under California law.

20 (f) Consistent with Section 11362.83, this section shall not  
21 prevent a local government from adopting or enforcing local  
22 ordinances that regulate the location, operation, or establishment  
23 of a medical marijuana collective or cooperative.

24 SEC. 5. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section 17556 of  
30 the Government Code, or changes the definition of a crime within  
31 the meaning of Section 6 of Article XIII B of the California  
32 Constitution.